

Open Minutes

Missouri State Board of Optometry

**July 14, 2001
Country Club Hotel
HH & Carol Roads
Lake Ozark, Missouri**

The open meeting of the Missouri State Board of Optometry was called to order by Dr. Harold L. Poynter, III, President, at approximately 9:00 a.m. on Saturday, July 14, 2001 at the Country Club Hotel, HH & Carol Roads, in Lake Ozark, Missouri.

BOARD MEMBERS PRESENT:

Dr. Harold L. Poynter, III, President
Dr. Max T. Aldrich, Vice President
Dr. Karen B. Rosen, Secretary
Dr. Cathy L. Frier, Member
Dr. Larry D. Snider, Member
Ms. Vickie E. Young, Public Member

STAFF MEMBERS PRESENT:

Sharlene Rimiller, Executive Director

LEGAL COUNSEL PRESENT:

Ms. Elena Vega, Assistant Attorney General
Mr. Glenn E. Bradford, Private Legal Counsel

GUESTS:

Mr. John Rollins, Wal-Mart Vision Centers

To better track the order in which items were taken up on the agenda, each item in the minutes will be listed in the order it was discussed in the meeting.

APPROVAL OF THE AGENDA

Mrs. Rimiller asked that the Continuing Education Audit update, Open #5, be moved to the closed agenda for attorney/client communications. Mrs. Rimiller added an item to the open agenda to discuss contact lens release information received from Dr. Rosen and an item to review the draft optometry renewal application. The open agenda was approved as revised.

APPROVAL OF MINUTES

The Board reviewed the following open minutes.

February 15, 2001

April 18, 2001 Conference Call
 May 11, 2001 Mail Ballot
 May 23, 2001 Conference Call
 May 31, 2001 Conference Call

Ms. Young noted that when a member of the Board is not present at the very beginning of a meeting, the minutes should not reflect negative language that the member was late. She requested that if the minutes need to reflect that the member did not vote because s/he was late, the minutes could indicate that the member did not vote because of having joined the meeting later. This negative language leaves the appearance that the member is not taking their duties seriously when, in fact, the member may have had good justification for joining the meeting later. A motion was made by Dr. Rosen and seconded by Ms. Young that the minutes be approved with the correction so noted by Ms. Young. Motion carried unanimously.

EXECUTIVE DIRECTOR REPORT

Mrs. Rimiller presented the Board with the following financial statement prepared as of May 31, 2001.

Beginning Fund Balance				\$157,009.06
Revenue (7/1/00 to 5/31/01)				<u>\$127,989.25</u>
Fund Balance Sub Total				\$284,998.31
Appropriations to Board:				
Personal Service	\$46,446.00			
Expense & Equipment	<u>\$42,604.00</u>			
Total Appropriations	\$89,050.00		\$89,050.00	
Appropriation Expenditures:				
Personal Service	\$21,297.78			
Expense & Equipment	<u>\$22,958.99</u>			
Total Appropriation Expenditures	\$44,256.77	\$44,256.77	<u>\$44,256.77</u>	
Fund Transfers: (Projected for Year)				
Rent & Utilities	\$1,409.29			
General Revenue	\$5,156.31			
Optical Imaging	\$30.17			
Hancock	\$1,726.00			
DED/MIS	\$7,455.82			
Refunds	\$666.09			
Professional Registration	\$29,833.87			

FY-2000 Transfers paid in FY-2001	<u>\$1,545.95</u>			
Total Transfers	\$47,823.50	<u>\$47,823.50</u>		
Total Fund Expenditures		\$92,080.27	-	\$92,080.27
Estimated Revenue (6/1/01 - 6/30/01)			+	\$11,035.75
Fund Balance Sub Total			=	\$203,953.79
Unexpended Appropriations:				
Personal Service				
Expense & Equipment	<u>\$19,645.01</u>			
Total Unexpended Appropriations	\$19,645.01		\$19,645.01	\$19,645.01
Fund Balance Projected as of 6/30/01				\$184,308.78

Mrs. Rimiller explained that the Office of Administration cut off FY-01 payment processing early this fiscal year to avoid some of the confusion caused from paying bills from two fiscal years. This should not impact appropriation expenditures for the Board as long as the cut off date is made consistently each fiscal year. Over all, the Board's fund level appears to be adequate based on the projected revenues and expenditures for the next five years. Mrs. Rimiller also advised the Board that all agencies within the Division have been asked to perform an exercise to reduce spending by 25%. She explained that since the Board's personal service appropriation is combined with the Division administration's budget, the exercise she provided was taken only from the Board's expense and equipment appropriation, which amounted to \$10,516. Mrs. Rimiller emphasized that this is only an exercise at this time and the budget reductions are not likely to affect fee funded agencies.

Truly Agreed and Finally Passed Legislation

Mrs. Rimiller provided the Board with relevant portions of the truly agreed and finally passed version of House Bill No. 567. She explained that there are two provisions in the bill that affect optometry and both will become effective on August 28, 2001. One provision of the bill relates to the clarification that allows deliberations of discipline to be held in closed session. The other provision provides that when determining whether there is cause for discipline or denial of an applicant or licensee testing positive for a controlled substance, it is presumed the applicant or licensee unlawfully possessed the controlled substance unless there can be produced a valid prescription.

FY-03 Decision Items

Mrs. Rimiller explained that it is time to begin preparations for the FY-03 budget. If there are any new decision items and/or programs that require additional funding, Mrs. Rimiller told the Board that she needs to prepare the appropriate justification for the budget. Mrs. Rimiller did not make any recommendations for new decision items and

there were no recommendations from the Board. The core budget request should be adequate for FY-03.

Proposed Legislation for 2002

Mrs. Rimiller informed the Board that if it wants to support any legislation during the next legislative session, the Department is requesting that information along with a draft proposal by the end of the month. The Board considered the need for a statute change regarding licensure by reciprocity. Dr. Snider said that in his opinion it is not relevant what type of an examination the applicant took in his/her state at the time of initial licensure, or whether the requirements for licensure at that time were equivalent to the requirements then in place in Missouri. Board members agreed and noted the difficulty sometimes in trying to determine if an applicant qualifies for licensure by reciprocity. Dr. Snider said that there needs to be language in the statute that gives the Board the ability to determine whether or not an applicant can practice in Missouri under today's standards, i.e., the scope of practice in the applicant's state of original licensure needs to be substantially equivalent to the scope of practice in Missouri at the time of application and the applicant needs to have a full scope of practice license. It was the consensus of the Board not to move forward with any legislative proposals at this time and that Dr. Snider's law committee can consider the reciprocity issue at a future meeting.

Renewal Application

Mrs. Rimiller asked the Board to review the draft renewal application. She noted that the application form is basically the same as last year with the exception of the CE statement. Mrs. Rimiller also asked the Board about the issuance of duplicate licenses. Under the current system, duplicate licenses are issued to a specific location but this process is very labor intensive with the need to enter all the additional office locations into the licensing system. Mrs. Rimiller said that the Division has the ability to eliminate addresses on the renewal license itself. The mailing address would be printed on the page containing the small wallet license. If the Board is not concerned about issuing the duplicates to a specific branch location, the licensee can indicate on the renewal form how many duplicates are needed and that number can be printed at the same time the renewal license is printed. It would be the licensee's responsibility to make sure a license is posted in all branch locations where s/he practices. Mrs. Rimiller stated that she is not aware of any specific statute or rule requiring that the address be printed on the license. The Board agreed to eliminate the addresses from the renewal licenses in order that duplicate licenses can be processed more easily.

Continuing Education Course Approval

The Board reviewed the list of continuing education courses approved between the date of the last meeting and the date of this meeting. A motion was made by Dr. Aldrich and seconded by Dr. Snider that the Board ratify approval of the continuing education courses on the list provided. Motion carried 4 to 0. Ms. Young chooses not to vote on continuing education course approval.

BOARD PRESIDENT'S REPORT

Dr. Poynter provided the Board with a report on the Board President's meeting that was held in Columbia on February 16, 2001. A copy of the minutes of this meeting was provided for the Board's review. There were three items that the Board Presidents focused on at this meeting. One was the legislative change to clarify that deliberations on discipline are closed. Another was about getting more accurate and complete reports on Department and Division expenses that are paid from Board funds. The third was the new cost allocation system proposed by the Division. Dr. Poynter noted that based on the comparison reports received since January, the average increase to the Board's fund under the proposed cost allocation system for the first five months is around \$69 per month. The proposed cost allocation system is scheduled for implementation in FY-03. The next President's meeting is scheduled on September 21st.

PATIENT REFERRAL BY AN OPTOMETRIST

The Board discussed the inquiry received from Deb Till of Boone Hospital Center asking under what circumstances an optometrist can refer to a physical therapist and an occupational therapist. Dr. Poynter referenced the Curteman Decision and noted that legally an optometrist cannot delegate any procedure considered the practice of optometry to someone who is not a licensed optometrist or physician. Ms. Vega referenced her memo dated July 24th. According to Ms. Vega, the physical therapy practice act does not provide for referrals from optometrists. They can only provide therapy with a prescription and direction of a licensed physician or surgeon, chiropractor, dentist, or a podiatrist. A physical therapist can provide certain specific services without a prescription and without direction from those professionals referenced in the statute. Therefore, an optometrist would be required to refer a patient to one of the professionals referenced in the statute for the patient to receive therapy, unless the services would be categorized within the services that a physical therapist may provide without orders. No referral is necessary for occupational therapy services so an optometrist could make referrals to an occupational therapist. It was the consensus of the Board to notify Ms. Till that the Board has no objection to an optometrist referring to either a physical therapist or an occupational therapist. However, Ms. Till needs to be informed that after having reviewed the physical therapy and occupational therapy practice acts, it appears to the Board that optometrists are not included in the physical therapy practice act where it talks about referrals.

ARBO REPORT

Dr. Aldrich provided the Board with a report of his attendance at ARBO's 82nd annual meeting. He also provided all board members with a summary of State Board reports that were provided at the meeting. The following topics were included in Dr. Aldrich's report:

- Some states are recouping costs and expenses of investigations and hearings in disciplinary orders issued to the optometrist;
- Missouri is still being criticized for being the lowest state in the United States on the number of continuing education hours required;

- Legislatively, State Boards and Associations in the past couple of years have been on the defense against legislation that would negatively impact optometry;
- In Louisiana and Mississippi, the Executive Director reported they are using the Drug Enforcement Administration (DEA) to make arrests in situations where businesses are selling the plano contact lenses without a prescription;
- Most states are imposing long suspension periods instead of revoking licenses because an optometrist with a revoked license can apply for a new license with no time limitations;
- Illinois and South Dakota are leaders with regard to making all optometrists have only one class of license. Under a new law, all optometrists have five years to become TPA certified and if they don't become certified in that five-year period, the optometrist loses his/her license;
- The ARBO attorney wants all states to get jurisdiction over unlicensed practice;
- Delegation of authority;
- Inactive licensure status; and
- With regard to continued competency, Maryland and Utah have a subcommittee that reviews patient records. The committee chooses sixty optometrists and has them send in ten patient records. The committee reviews the records and notifies the optometrists of any problems. If there are problems, the optometrist is scheduled for another review the following year.

LAW COMMITTEE REPORT

Dr. Snider reported that there has not been any recent activity with the law committee. Daryl Hylton's proposed statute change defining optometry is as far as the committee has come and Dr. Snider believes that nothing will be accomplished under the current system. The Attorney General's Office does not have time to draft a complete re-write and Dr. Snider's recommendation is to have private counsel come up with an initial draft. The attorney most familiar with the optometry law is Al Schoenbeck and Dr. Snider suggested that the Board hire Mr. Schoenbeck's services for the re-write and then have Mr. Bradford conduct the review and help write the regulations. Mr. Schoenbeck is willing to provide the Board this service as long as it does not conflict with the wishes of the Missouri Optometric Association. Dr. Snider pointed out that the purpose of the re-write is to clarify the existing statutes and not include any substantive changes in Phase I. Perhaps in Phase II, the Board can work on addressing the issue on the practice of optometric technicians. Ms. Vega volunteered to work on the re-write but she thought that Mr. Hylton's proposed statute defining optometry takes care of most of the problems she had with the statutes. It was the consensus of the Board to accept Dr. Snider's recommendation to ask that Mr. Schoenbeck come up with an initial draft. Mr. Bradford volunteered to provide the Board with an estimate on how much it cost the Accountancy Board for their firm to provide the work on the re-write of the accountancy laws. Dr. Snider was asked to provide the Board with another update regarding this matter at the October meeting.

OPHTHALMOLOGIC TECHNOLOGIST

Dr. Rosen did not have any further information to report on the ophthalmologic technologist issue other than to say that the Missouri Optometric Association is monitoring the situation. Information regarding the JCAHPO certifying examination was provided to the Board for informational purposes. Dr. Poynter referenced the Curteman Decision and said that no one can delegate anything that is defined under the practice of optometry to an unlicensed person. Mrs. Rimiller was asked not to include this item on future agendas unless additional information is received to warrant further discussion.

AOA SUMMIT

Dr. Frier provided a report on her attendance at the AOA's Summit on Board Certification and Continued Competency. The meeting was held in St. Louis on April 29-30. Since Dr. Frier presented a written report and that report is a part of the Board's file, a summary will not be made a part of the open minutes.

DELEGATION OF AUTHORITY IN THE CLINICAL SETTING

The Board reviewed the ARBO survey regarding delegation of authority in the clinical setting. Since the survey was due by April 6th for a panel discussion at the June 2001 annual meeting, Dr. Poynter completed the survey on behalf of the Board but asked that it be included on the July agenda for full Board review. Dr. Poynter said that any of the functions listed on the survey where there needs to be some measurement of optical defect, the function can not be delegated under the Curteman Decision. The survey is not binding in any way and Dr. Poynter recognized that Board members might have varying opinions on each one of the functions listed. Dr. Rosen mentioned that she was not sure she agreed with all of the answers but there was no further discussion on specifics at this time.

UPCOMING TRAVEL

Vickie Young expressed an interest in attending the CLEAR conference on September 12-16, 2001, in San Antonio, Texas. She will notify Mrs. Rimiller on whether or not she can attend the conference after checking her calendar. There was no interest expressed from Board members to attend the CAC annual meeting on November 14-16, 2001.

DEA PAMPHLETS

The Board reviewed the information received from the Bureau of Narcotics and Dangerous Drugs (BNDD) regarding the new pamphlets from the Drug Enforcement Administration. The pamphlets were forwarded to the Board for their information and distribution. The Board did not express any interest in distributing this information to its licensees.

RULES ON RECIPROCITY LICENSURE

The Board reviewed subsection (C) of section (1) of the rules on reciprocity licensure, 4 CSR 210-2.011. Dr. Snider suggested an amendment to the rule to eliminate subsection (C) entirely. As discussed earlier in the meeting, Dr. Snider is not as

concerned regarding what the examination requirements were in a state at the time the applicant was originally licensed in that state. He is more concerned as to whether or not the applicant is qualified for a full scope license at the time of his/her application in Missouri. It was the consensus of the Board to work on the statute first and then work on the regulations.

ELECTION OF OFFICERS

Dr. Poynter recommended the following nominations: Dr. Aldrich as president, Dr. Rosen as vice president and Dr. Frier as secretary of the Board for a one year term beginning immediately following this meeting. A motion was made by Vickie Young and seconded by Dr. Snider to accept the nominations as recommended by Dr. Poynter. Motion carried unanimously. There being no further nominations, the new officers of the Board were elected by acclamation.

CONTACT LENS PRESCRIPTION RELEASE

Dr. Rosen provided the Board with information from an Internet web site regarding a new contact lens prescription release rule that just passed in the state of New Mexico. She reminded the Board that this was attempted several years ago in Missouri and this may be a good reference if it comes up again. Dr. Rosen said that contact lens mail order companies should be regulated.

COMPLEMENTARY AND ALTERNATIVE MEDICINE

Mr. Glenn Bradford provided the Board with copies of his paper on "The Legal Regulation of Complementary and Alternative Medicine in the State of Missouri". Mr. Bradford spent some time in summarizing his paper for the benefit of the Board.

CLOSED SESSION

Motion was made by Dr. Aldrich and seconded by Dr. Frier to move into closed session pursuant to section 610.021 (1) and (14) RSMo, for the purpose of discussing complaints, investigative reports, general legal actions, causes of action or litigation and any confidential or privileged communications between the Board and its attorney. Motion carried unanimously.

ADJOURNMENT

Prior to adjournment, the Board expressed their appreciation to Dr. Poynter for the wonderful job he has done this past year as President of the Board. There being no further business to be brought before the Board at this time, a motion was made by Vickie Young and seconded by Dr. Rosen that this meeting adjourn. Motion carried unanimously. The meeting adjourned at approximately 3:15 p.m.

Respectfully submitted,

Sharlene Rimiller, Executive Director

Approved by the Board on: _____